



Network Implementation and Management Agreement

Date: April 4, 2019

Client Name: City of Costa Mesa
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1) Terms

a) *Billing Rates*

Customer agrees to pay Affant for all services according to the fees set forth in Exhibit A. Affant reserves the right to change its rates at any time; however, a payment schedule will not be modified without the written approval of Customer. Maintenance billing cycle is the 1st of the month through the last of the month, and bills are mailed monthly and due on a net 30 basis. Payments for maintenance service must be received by Affant before the covered month commences. Affant will not pro-rate fees for maintenance services unless otherwise specified in writing. Charges for additional work or products will be invoiced to Customer separate from maintenance charges and are due and payable on a net 30 basis. Rates for additional work or products are as agreed upon by approved customer contact. Any amount not paid when due shall bear a late payment charge, until paid, at the rate of 0.5% per month or the maximum amount permitted by law, whichever is less. Customer may terminate this Agreement if Customer does not agree to a rate increase imposed by Affant by providing notice to Affant within 10 business days of receipt of notice from Affant of the rate increase

b) *Term Commitment*

This Agreement will be for a **12 (twelve)** month term (the "Initial Term") effective from the date of this Agreement. If Affant is providing network implementation services for the maintained network, this Agreement shall commence on the first day of the month that any maintenance services are initiated on any part of the implemented network. ~~This Agreement will be automatically renewed at the end of the initial term for successive 12 (twelve) month terms (each a "Renewal Term") at a renewed rate increase of an additional 12% unless Customer provides sixty (60) days written notice to Affant of termination of this Agreement prior to the end of the then-current Term or Renewal Term, as the case may be. Should Customer choose to not extend the term and continue to receive services at a month-to-month cycle, the Customer account will incur a maintenance service rate increase of an additional 30% and will require sixty (60) days written notice to Affant of termination of service.~~

c) *Cancellation Policy*

- In the event of early cancellation of this Agreement by Customer, prior to the end of the Initial Term, Affant will refund to Customer any fees paid in advance of such cancellation within 60 days.
- All non-maintenance charges must be paid in full before cancellation will become effective.
- If Customer terminates this Agreement except for a material breach during the Initial Term, Customer will be required to pay Affant an early termination fee equal to 50% of the remainder of the aggregate amount of Affant maintenance fees payable through the Initial Term. If Customer terminates this Agreement except for a material breach during a Renewal Term, the early termination fee will be equal to 3 months of Affant's then-current maintenance fees.
- For security purposes, all cancellation requests must be signed by the primary contact person on the account. Any cancellation request must be made at least 30 days in advance of the cancellation. Any cancellation will be effective at the end of the billing cycle that falls on the 30th day following receipt by Affant of written notice of cancellation. Any cancellation by Affant or Customer will not relieve Customer of any obligations to pay fees accrued prior to such cancellation of any services that Affant has provided to Customer prior to the termination date.

d) *Termination*

This Agreement may be terminated earlier (in whole, or in respect of any Statement of Work) by either party (a) if the other party materially breaches a provision of this Agreement and fails to cure such breach within 30 days (ten days in the case of any non-payment) after receiving written notice of such breach from the non-breaching party or (b) immediately upon written notice, if the other party makes any assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of any or all of the other party's property, or the other party seeks protection under any bankruptcy, receivership, trust deed, creditor's arrangement, composition or comparable proceeding or such a proceeding is instituted against the other party and is not dismissed within 90 days, or the other party becomes insolvent or, without a successor,

dissolves, liquidates or otherwise fails to operate in the ordinary course. Upon expiration or termination of this Agreement for any reason, all rights, obligations and licenses of the parties hereunder shall cease, except that (a) Customer's liability to pay for services performed (and non-cancelable expenses incurred) prior to the termination date shall not be extinguished, and shall become due and payable on the termination date, (b) all other obligations that accrued prior to the effective date of termination and remedies for breach of this Agreement shall survive any termination and (c) the provisions of Sections 1(e) – 1(l) shall survive.

e) Warranties

Affant warrants and represents that it utilizes security procedures that are in line with customary industry standards. Affant warrants and represents that its system will be compatible with and interface with Customer's existing systems immediately following implementation. Any warranty claim under this section must be made in writing within 30 days after performance of the nonconforming service or implementation of the defective equipment. Affant's sole obligation and customer's exclusive remedy in respect thereof is to promptly and in a commercially reasonable time period, re-perform the nonconforming service or repair the equipment. Affant makes no warranty, representation or promise not expressly set forth in this agreement. Except as otherwise expressly set forth herein, the services and equipment related thereto are provided "as is." Affant does not warrant that the services or related equipment will satisfy customer's requirements or that the resulting network will be without defect or error or that the operation of the network will be uninterrupted or any errors which may be contained in the network can or will be fixed. To the fullest extent permitted by law, Affant hereby disclaims all other warranties, whether express or implied, oral or written, with respect to the deliverables and services, including, without limitation, all implied warranties of accuracy, integration, merchantability or fitness for any particular purpose and all warranties arising from any course of dealing, course of performance or usage of trade.

f) Insurance

During the term of this Agreement, Affant will maintain insurance as described below:

(i) Workers' Compensation insurance in an amount equal to or greater than that required by applicable law.

(ii) Commercial General Liability or other comparable broad form general liability coverage which includes coverage for bodily injury, property damage, advertising and personal injury, products-completed operations, and contractual liability in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate.

g) Limitation of Liability

IN NO EVENT WILL AFFANT BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR CONTINGENT DAMAGES WHATSOEVER IN CONNECTION WITH THIS AGREEMENT, INCLUDING LOST OR DAMAGED DATA, LOSS OF BUSINESS, ANTICIPATORY PROFITS, OR ANY OTHER CONSEQUENTIAL OR INCIDENTAL DAMAGES RESULTING FROM THE USE OR OPERATION OF THE NETWORK OR THE MAINTENANCE THEREOF OR IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT AND WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE. IN NO EVENT SHALL AFFANT'S LIABILITY IN CONNECTION WITH THIS AGREEMENT EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER TO AFFANT HEREUNDER. NOTWITHSTANDING THE FOREGOING, THESE LIMITATIONS ON AFFANT'S LIABILITY WILL BE INAPPLICABLE TO THE EXTENT THAT ANY SUCH DAMAGES ARE THE RESULT OF THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF AFFANT, ITS AGENTS OR EMPLOYEES.

h) Confidential Information Defined

Customer and Affant may, during the performance of the services hereunder, have access to and acquire knowledge of, including without limitation, methods; processes; formulae; compositions; inventions; machines; computer software; source codes; computer hardware; research projects; customer lists; pricing data; sources of supply; marketing, production, merchandising systems or plans associated with the other's business; electronic images data, systems and other information concerning the operation, business, financial affairs, products, customers, intellectual propriety rights or other aspect of the other party that may not be known to the general public ("Confidential Information"). Notwithstanding the foregoing, "Confidential

Information" also includes (i) Customer's project and components thereof ~~(ii) the terms of the agreement by and between Affant and Customer, including, but not limited to billing rates; and,~~ (iii) any information or material that the other party obtains from any third party that the disclosing party treats as proprietary or designates as Confidential Information, whether or not owned by the disclosing party. "Confidential information" does not include information that the non-disclosing party can document in reasonable detail to the disclosing party's satisfaction: (x) is known by the other party at the time of receipt from the disclosing party and is not subject to any other non-disclosure agreement between the parties; (y) is now, or hereafter becomes, generally known to the industry or public through no fault of the non-disclosing party; or, (z) is otherwise lawfully and independently developed by the non-disclosing party, or lawfully acquired from a third party without any obligation of confidentiality.

i) Non-Disclosure

Neither party may use, publish or divulge any Confidential Information to any third party without the other's prior, express, written approval, which the other party may withhold at its sole discretion. Both parties agree that Confidential Information will only be disclosed to those of its employees and consultants as is necessary to perform under this Agreement. Both parties shall cause its employees, agents and every other party it employs in connection with this Agreement to protect the Confidential Information from unauthorized use or disclosure with the same degree of care, but no less reasonable care, as the party uses to protect its own Confidential Information of like nature. Either party shall notify the other in writing in the event of any misuse or misappropriation of the Confidential Information that comes to its attention. In the event that either party is directed to disclose any portion of the Confidential Information in conjunction with a judicial proceeding or arbitration, the party required to disclose shall immediately notify the other thereof in writing. Upon the termination of this Agreement, each party shall immediately return all confidential information to the other party.

j) Non-Circumvention

During the term of the Agreement by and between Affant and Customer and for a period of twelve months thereafter (the non-circumvention period"), Customer and Affant respectively will not (i) have contact with an Affant or Customer employee to solicit, entice, or persuade any employee of Affant/Customer to leave the services of Affant/Customer for any reason or (b) procure employment for any Affant/Customer employee. It is understood that the damages to either party arising from a breach of the foregoing promise would be extremely difficult to calculate. As a result, in the event an Affant/Customer employee takes a position with Customer/Affant, the breaching party shall be responsible for the payment of an amount equal to three month's salary of that employee calculated based on the last paycheck received by the employee from Affant/Customer (the "Interference Fee"). The Interference Fee represents Affant's and Customer's best estimate of the damages associated with a breach of this provision, and not a penalty.

k) Attorneys' Fees

If any legal action or other proceeding, including, without limitation, arbitration, is brought to enforce the provisions of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and other costs incurred in the action or proceeding (including all appeals and retrials), in addition to any other relief to which the prevailing party may be entitled.

l) Injunctive Relief

Each party agrees that, in the event of any breach or threatened breach of the sections entitled "Confidentiality, Non-Disclosure, Non-Circumvention," the non-breaching party may suffer irreparable damage for which it may have no adequate remedy at law. Accordingly, the non-breaching party may be entitled to injunctive and other equitable remedies to prevent or restrain, temporarily or permanently, such breach or threatened breach, without the necessity of showing actual damages or that monetary damages do not afford an adequate remedy at law. Such remedies shall be in addition to any other remedy that the non-breaching party may have at law or in equity.

m) Survival

Termination of this Agreement by either party shall not affect the parties' respective obligations under this Agreement with respect to any obligations of confidentiality, non-disclosure and non-circumvention, or the

obligation to pay for all services performed prior to the effective date of the termination. The parties agree that all provisions of this Agreement which operate to protect the rights of the individual parties will remain in force without regard to the termination of this Agreement by either party.

n) Dispute Resolution

In the event of a dispute between Affant and the Customer arising from this Agreement or the interpretation thereof, before filing a lawsuit, all parties agree to first submit the dispute to mediation with a mutually acceptable mediator, with each party bearing one-half (1/2) of the mediator's fees. Except as expressly set forth below, if any party files a lawsuit without complying with the foregoing requirement, that party shall waive its right to any attorneys' fees to which such party may be entitled to in such lawsuit under this Agreement. Notwithstanding the foregoing, if a party submits a written request to mediate a dispute to the other party and the latter fails to respond in good faith and to take reasonable steps to initiate mediation within fifteen (15) days of receipt of such notice, the party requesting the mediation will then be free to file a lawsuit and there will be no waiver of any entitlement to attorneys' fees under the preceding sentence. No provision of this Section 1(n) will, however, limit the right of a party to obtain provisional or ancillary remedies from a court of competent jurisdiction before or during the pendency of any mediation.

o) Choice of Law/Venue

Both parties agree that this Agreement will be construed and governed by the laws of the State of California, without giving effect to its choice of law provisions. In the event that a dispute arises with respect to the terms of this Agreement, the parties agree that the exclusive and sole venue for resolution will be a court of competent jurisdiction within the County of Orange, State of California and the parties agree to submit to the exclusive jurisdiction of same.

p) Integration

This Agreement constitutes and contains the entire agreement and understanding concerning the subject matter between the parties and supersedes all prior and contemporaneous negotiations, proposed agreements or agreements, whether written or oral. This Agreement may only be modified by a writing signed by all the parties.

q) Severability

In the event that any provision of this Agreement is deemed invalid, illegal, or unenforceable, all other provisions of the Agreement that are not affected by such invalidity, illegality or unenforceability, will remain in full force and effect. Further, the parties hereby agree that any such provision deemed invalid, illegal or unenforceable will be reduced in scope, power or effect so that the provision is enforceable to the maximum extent permitted by law.

r) No Third Party Beneficiaries

Nothing in this Agreement, express or implied, is intended to or will confer on any person other than the parties and their respective successors or assigns any rights (including third-party beneficiary rights), remedies, obligations or liabilities under or by reason of this Agreement. This Agreement will not provide any third party with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those existing without reference to the terms of this Agreement.

s) Binding Effect

This Agreement is binding upon and will inure to the benefit of the parties and each of the party's respective heirs, executors, administrators, successors and assigns of the parties.

t) Assignment

No party may assign its rights or obligations under this Agreement, in whole or in part, without the prior express written consent of the other parties.

Effective Date: 08/01/2019

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above for a term of one (1) years.

Agreement Number: 30-0819M

City of Costa Mesa

By: Justin Martin
Name: Justin Martin
Title: Acting City Manager
Date: 8/21/19

Affant Network Services

By: Josh Linn
Name: Josh Linn
Title: Engineering Director
Date: 8-21-19

City of Costa Mesa

Review by: Kelly Tateen
Name: Kelly Tateen
Title: Finance Director
Date: 8/21/19

City of Costa Mesa

Approved as to Form: [Signature]
Signature: [Signature]
Name: T. PREZIOSI
Date: 8/22/19
Title: ACA

Affant Maintenance

- Includes unlimited software upgrades, minor and major revisions.
- Unlimited support within contract hours, tier 1, 2 and 3
- Unlimited hours of support calls (We're available 24x7 should an emergency arise and we don't charge for you to call us)
- All calls are answered Monday through Friday from 7 AM – 6:30 PM by an engineer.
- 2 engineers are on call at all times after hours.
- 4 tier escalation path right down to the owner's cell phone.
- Free bMACs (basic moves, adds and changes) to include:
 - Add/remove security policies, access list changes, routing changes, NATs, add users, move users, holiday schedules, minor VLAN changes, administrative training, prioritization etc...
- 25% Discounted rate for any advanced MAC –examples adding new offices, new circuits, advanced VLAN changes etc...
- Affant loaner equipment is available in many situations
- Immediate access into hardware without having to roll a truck, spare in the air in case overnight server replacement is not available from the manufacturer.
- We take responsibility for 100% of telco/carrier related calls
- We take responsibility for problem isolation regardless of phone/network/carrier related problem.
- 24x7 Pro-active monitoring:
 - Affant checks your network every 60 seconds. We alert on this data in real-time to be aware of problems as they occur and store it for historical trends.
 - We collect device network connectivity up/down, CPU utilization, memory utilization, interface utilization, bandwidth utilization, error thresholds, flow and top talkers to isolate bandwidth trends, NTOP and packet sniffing
 - We do this for servers, phone systems and networks.

Exhibit A. Quote and Schedule

City of Costa Mesa
P.O. Box 1200, Costa Mesa, CA 92626
Affant Assured Monthly Maintenance

Description	Qty.	Monthly Cost	Annual Cost
Location: City Hall			
Sonicwall NSA 5600 – City Hall	1	\$550.00	\$6,600.00
Sonicwall NSA 2650 – PD Connection	1	\$145.00	\$1,740.00
Threatstop service and updates	1	\$625.00	\$7,500.00
Affant Threatstop Maintenance	1	\$150.00	\$1,800.00
Location: Police Department			
Sonicwall NSA 2650 – PD Internet	1	\$450.00	\$5,400.00
Sonicwall NSA 2650 – MetroNet	1	\$145.00	\$1,740.00
Threatstop service and updates	1	\$228.71	\$2,744.50
Affant Threatstop Maintenance	1	\$150.00	\$1,800.00
Location: Fire Stations			
Sonicwall TZ215 – Fire Stations (1 – 6)	6	\$870.00	\$10,440.00
Sonicwall TZ215 – Administration	1	\$145.00	\$1,740.00
Location: Senior Center			
Sonicwall TZ215 – WIFI	1	\$145.00	\$1,740.00
Total Affant Assured Monthly maintenance – 1 yr.		\$3,458.71	\$43,244.50
Special Customer, Multi-location Discount		(\$395.15)	(\$4,741.80)
Monthly and Annual Total after discount		\$3,208.56	\$38,502.70

Exhibit B. Contacts

Account Executive: **Joshua Linn**
(714) 338-7121
jlinn@affant.com

Single point of contact and management of AFFANT activities.

Technicians: **Staff**
Customer Support
(714) 338-7111
ticketmanager@affant.com

Maintenance Support: Report Trouble Tickets, trouble-shooting, Level 1 through 3 support

Accounting: **Maira Ferreira**
(714) 338-7118
accounting@affant.com

Handles invoices and all areas of accounts receivable.

Customer Contact:

- Implementation
- Maintenance
- E-mail Notifications

Customer Contact:

- Implementation
- Maintenance
- E-mail Notifications

Customer Billing:

- E-mail Invoices

Other:

Other:

Other:

Exhibit C. Customer Responsibilities & Requirements

Item	Description	Response
Customer Contact	Appoint Customer Network Implementation Manager as a single point of contact with AFFANT.	
Customer Contacts per Site	Appoint Customer Personnel at each site who can operate the network application during scheduled activity.	
Design Requirements	Provide AFFANT with design requirement information including but not limited to Network Strategy, Network Goals, Network Applications, Technical Specifications, Carrier Services, Network Logistics, Timing Schemes, and Third Party Equipment.	

- Assure that appropriate electrical power interfaces are provided for the AFFANT equipment per the product specifications.
- Assure that appropriate environmental conditions are approved for the AFFANT product specifications.
- Assure that proper telco demarcation type is provided per the AFFANT product specifications.
- Assure that distance of the cable run between telco demarcation and AFFANT equipment is within the cable length ordered for connection.
- Assure that all cable routing under floors, through walls, over ceilings or in cable trays is completed prior to the AFFANT equipment installations.
- Provide a Primary contact or contacts per site to manage the physical installation of equipment as labeled by the Affant implementation staff for implementation.
- Meet with AFFANT prior to network installation to review installation strategy, site readiness, and personnel availability for support and site access.
- Provide an equipment arrival notice to the AFFANT Account Executive when AFFANT equipment or third party equipment arrives at each site, or when services by third-party providers such as common carriers are completed.
- Assure AFFANT equipment box delivery to the correct installation location.
- Notify AFFANT Account Executive of short shipped equipment immediately.
- Notify Affant or file insurance claims with freight carriers for equipment damaged in transit.
- Assure telco circuit installations and certify carrier line quality prior to AFFANT installation visit.
- Provide a dedicated, direct access, single line telephone interface for configuration modems at each site.
- Notify the AFFANT Account Executive 24 hours in advance when delay in implementation of a site is necessary due to business, weather, local emergency or other mitigating matters.
- Assure that AFFANT or its representative is specifically designated as a contact for the installation of the circuits from any carriers involved.

Exhibit D. Basic / Advanced Moves, Adds and Changes

Table:

No Proposal Needed		Signed Proposal Required	
<i>Maintenance Clients Only</i>		<i>Service / Labor Project</i>	
BMAC	Outside Maintenance Schedule Charged	AMAC <i>(Maintenance Clients)</i>	Flat Rate
	Hourly		Hourly
BMAC	Within Maintenance Schedule w/in 48 Hours at No Charge	Implementation	Flat Rate
			Hourly

Definitions:

BMAC-

Basic moves, adds, and changes (bMACs) are provided at no additional charge within 48 hours of request. Typical response is same-day. bMACs include: adding and deleting security rule sets on existing systems; adding and deleting users; modifying passwords; changing security rights; etc. In general, anything that can be done on an "as available" basis (hence the "48 hours" policy) and does not involve interacting with any third parties (meaning some party other than the direct Affant client) and does not involve adding new extraneous devices is included. Requests for bMACs are directed to the Customer Service team via email or phone.

BMAC Examples:

- Adding and deleting security rule sets on existing systems
- Adding and deleting users
- Modifying passwords
- Changing security rights

IPS specific BMACs

- Appliance firmware upgrades
- Definition updates
- Quarantine review and investigation upon request
- Rule set additions, modifications, deletions
- Rule set performance review and tuning
- Custom rule set creation
- Report creation and modification
- Real time review of metrics, stats

aMAC –

AMAC's are billable projects that are not quite a full blown implementation yet definitely fall outside of the BMAC. AMACs do not include testing or configuration of new hardware. In most cases, AMACs can be completed within one week.

aMAC Examples:

- Configuration changes that involve 5 or more sites.
- Configuration wipe and types (default rebuilds).
- Software upgrades.
- Configuring a meshed network.
- Modifications requiring a change in firewall "mode" (i.e. route-based)
- Configuration changes that involves network re-design such as adding new networks or vlans or creating a DMZ.
- Initial configuration of remote access. (Client to Gateway VPN)
- Implementing network redundancy or fail-over
- Implementing a routing protocol.
- Changes that involve working with or coordinating a 3rd party
- Communication to 3rd Party Router / Firewall / VPN Gateway / Phone System
- Change of carrier involving porting of numbers for an existing phone system